

No. 14/13/87-6-Lab./575.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad respect of the dispute between the workman and the management of M/s Tryshoera India Private Limited, Faridabad *versus* Uma Shankar Saini.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD.

Reference No. 250/92

Between

THE MANAGEMENT OF M/S TRYSHOERA INDIA PRIVATE LIMITED, PLOT NO. 32, SECTOR-6, FARIDABAD.

Versus

THE WORKMAN NAMELY SHRI UMA SHANKAR SAINI C/O HIND MAZDOOR SABHA, 29 SAHID CHOWK, FARIDABAD.

Present:—

Shri B. L. Gupta, Authorised Representative for the workman

None for the management.

AWARD

In exercise of the powers conferred by clause(c) of sub-section (i) of section 10 of the Industrial disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 17500-6, dated 2nd April, 1992:—

"Whether the termination of services of shri Uma Shankar Saini is legal and justified? If not, to what relief is he entitled to?"

2. The case of the workman is that he was employed with the management on 1st June, 1982 and his last drawn wages were Rs. 970. He had not provided any cause of complaint regarding his work to the management. On 26th April, 1991 the management had issued notice that the factory had been closed due to non-co-operation of the workman and the services of all the workman stood terminated. This was done by the management as the union of the factory had given a joint demand notice dated 26th February, 1991. The management had started getting the work done from the contractors. On the other side pressure was put on the union for settlement as was done earlier in the year 1989. The management also got the matter settled with certain workman through settlement under section 12(3) of the Act. The management had been running the factory with the help of the contractors and such the complaint was made to the Labour Inspector. The Labour Inspector inspected the factory and had found the contractor working for the management. Thus, the termination of services of the workman effected by the management in the garb of closure of the factory is illegal, against the provision of the Act and violative of rules of natural justice. Consequently, the workman is entitled to be reinstated in to service with continuity in service and with full back wages.

3. The management appeared and submitted written statement dated 27th July, 1992 stating therein that the Government had made a reference without applying its mind. The factory had been closed with effect from 26th April, 1991 and all the employees were accordingly removed from services. The factory had been closed due to shortage of orders and financial crisis. Moreover the management had to vacate the rented premises to obey the order of Honorable High Court. All the workers had collected full and final dues before the Labour-cum-Conciliation Officer, sector-7, Faridabad. The workman had raised the dispute just to blackmail the management and as such the workman is not entitled to any relief.

4. The workman submitted rejoinder dated 24th November, 1992 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issue was framed:—

1. As per terms of reference.

6. The management sought several adjournments to lead evidence. On 4th March, 1994 none appeared on behalf of the management and it was thus, ordered that the management be proceeded against *ex parte*.

7. The workman has examined himself on oath and has stated facts mentioned above.

8. I have heard shri B. L. Gupta authorised representative of the workman and have also through the service evidence on record. My findings on the abovesaid issues are as under :—

Issue No. 1.

9. The workman has stated on oath that he was employed by the management as Escavin Machine Operator with effect from 1st June, 1982 and had worked upto 26th April, 1991. It is thus, clear that the workman had rendered service for a continuous period of more than 240 days preceding on the date of termination of his services. The management has not led any evidence to show that the factory was closed as per law and the workman was offered compensation required to be paid to him. The management has also not led any evidence to prove that the workman had settled his claim with the management. Keeping in view this position, the termination of services of the workman by the management is illegal and unjustified. Consequently, he is entitled to be reinstated into service with full back wages and continuity in service. Issue No. 1 is decided against the management and in favour of the workman.

10. For the reasons recorded above, it is held that the termination of services of the workman by the management is illegal and unjustified. The workman is entitled to be reinstated into service with continuity in service and full back wages.

The award is passed accordingly.

U. B. KHANDUJA

The 12th August, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2806 dated 31st August, 1994.

A copy with three spare copies is forwarded to the Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6 Lab./577.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Nanak Dairy Plant, Hodal, PBD *Versus* Dhanpal.

**IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD**

Reference No. 84/87.

Between

THE MANAGEMENT OF M/S NANAK DAIRY PLANT, HODAL, FARIDABAD

Versus

**THE WORKMAN NAMELY SH. DHANPAL C/O ANTRARASTRIYAVADI MAZDOOR UNION,
G-162, IINDIRA NAGAR, SECTOR 7, FARIDABAD**

Present :

Sh. Jawahar Lal, AR, for the workman.

Sh. Satish Kaushik, AR, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication, —*vide* Haryana Govt. Endorsement No. 4936-41 dated 3rd February, 1987 :—

Whether the termination of services of Sh. Dhanpal is legal & justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was appointed on 1st January, 1983 by the management as compressor operator. His services were illegally terminated on 19th September, 1986 on account of his asking for legal facilities and trade union activities. He was neither served with any notice nor was paid retrenchment compensation. He is thus, entitled to be reinstated into service with continuity in service and full back wages.

3. The management submitted in the written statement that the workman had joined service with the management as temporary helper in the year 1983. On 15th September, 1986 he was transferred from Hodal to Delhi. He refused to take the order of his transfer and left the factory. He made complaint to the Labour Inspector. The management appeared before the Labour Inspector and again asked the workman to take the letter of transfer. The workman took the letter and promised to join service at Delhi. The management and also brought this position to the notice of the Labour-cum-Conciliation Officer. The workman had disobeyed the lawful orders of the management. The management had not terminated his service and so the reference is bad in law.

4. In the rejoinder dated 1st June, 1987 the workman reiterated his position and denied the averments of the management.

5. On the pleadings of the parties, the following issues were framed :—

1. Whether reference is bad as alleged ?
2. Whether workman is gainfully employed ?
3. As per reference.

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the file carefully. My findings on the aforesaid issues are as under :—

Issues No. 1 and 3 :

8. Both of these issues are interdependent and as such are discussed together.

9. MW-1 R. C. Sharma deposed that the workman was transferred to Head Office, Delhi in demand of one person from Head Office. The workman had refused to receive the transfer order Ex. M-1 and so it was sent to the workman through Regd. post as per postal receipt Ex. M-2. They had appeared before the Labour Inspector on the complaint of the workman and delivered letter dated 27th September, 1986 Ex. M-3 to the workman in the presence of the Labour Inspector directing him to join duty at Delhi within five days. The workman did not comply with the order and served demand notice. In the end he stated that the workman had simply been transferred and the management was still willing to take back him on duty at Delhi without back wages.

10. On the other hand, the workman deposed that his services were terminated illegally without payment of retrenchment compensation. He also placed on record certain documents.

11. Sh. Satish Kaushik, authorised representative of the management has contended that it stands proved from the statement of MW-1 R. C. Sharma that the workman was appointed as helper in the year 1983.

In reply, it has been submitted on behalf of the workman that the management has been resorting to unfair labour practice from the very beginning. The workman was not given appointment letter at the times of appointment. He was appointed as Compressor Operator as stated by him oath. The management has not produced on record in support of their contention. It may thus, be held that he was appointed as Compressor Operator.

It is the case of the workman himself that he was appointed on 1st January, 1983. MW-1 R. C. Sharma stated in his cross examination that the entire past record of the factory had been burnt in 1984 riots. There is no rebuttal to it. The workman has not indicated anything about his past experience or technical qualifications. On the basis of which he could be appointed as Operator. His mere self serving statement thus can not be accepted. It is held that the workman was appointed as helper and not as operator.

12. It has next been urged on behalf of the management that it stands established from the statement of MW-1 R. C. Sharma coupled with letters Ex. M-1 and Ex. M-3 that the services of the workman were never terminated. He was simply transferred to Delhi due to administrative necessity and he could still join duty as helper at Delhi. The workers of the factory had not formed any union at the relevant time and thus the question of victimisation of the workman due to his trade union activity did not arise.

13. It has been vehemently argued on behalf of the workman that as per letter dated 15th September 1986 Ex. M-1 the workman was transferred to Delhi. MW-1 R. C. Sharma deposed that he had joined service with the management in the year 1989. Sh. Sharma thus could not be present on 15th September, 1986 when the workman had allegedly refused to receive letter dated 15th September, 1986 Ex. M-1. His statement thus, cannot be accepted that the workman had refused to receive this letter. The date on the postal receipt Ex. M-2 is not at all legible. It cannot be thus, taken that letter dated 15th September, 1986 Ex. M-1 was sent through Regd. post. The management has not produced any letter or complaint of the workman to prove that they had appeared before the Labour Inspector. The version of the management is thus, false that the workman was given letter dated 27th September, 1986 Ex. M-3 before Labour Inspector. Again the statement of MW-1 R. C. Sharma cannot be accepted in this regard as he could not be present before Labour Inspector. With regard to the comments before Labour-cum-Conciliation Officer, he submitted that it is clear from the perusal of the comments itself that the management had not appeared before the Labour-cum-Conciliation Officer on 4th November, 1986 and had simply sent the written comments. This position clearly shows that the management had illegally terminated the services of the workman on account of his trade union activities.

14. It appears from the complaint, dated 26th April, 1985 that several workers of the factory had complained to General Secretary Antrarastriyavadi Mazdoor Union that the company had not given them appointment letters, ESI, cards and wages slips and had taken signatures on blank papers and vouchers for illegal use to terminate their services. It also appears from the complaint dated 1st May, 1985 Ex. W-7 that the workman again made complaint to Labour Inspector that the management had terminated the services of Shoba Ram and others were being considered for similar action on account of their demand for legal facilities. It appears that a copy of this complaint was sent by the workmen to Labour Commissioner, Haryana & others. The perusal of letter dated 9th August, 1985 Ex. W-4 shows that the Labour Inspector had asked the management to appear before him on 17th August, 1985 in connection with the enquiry of complaint dated 1st May, 1985. Similarly letter dated 24th June, 1985 Ex. W-2 shows that Dy. Labour Commissioner, Faridabad has asked the management to appear before him on 29th June, 1985. The clippings of news papers dated 12th September, 1986, Ex. W-17 dated 8th September, 1984 Ex. W-18 and dated 1st January, 1988 Ex. W-24 also show that there was unrest amongst the workers of the factory due to alleged illegal activities of the management. The complaint dated 29th August, 1986 Ex. W-5 shows that the steps taken by the Labour Inspector or the Dy. Labour Commissioner had not brought any settlement between the agitated workers and the management till that date. It is clear from this position that Nanak Dairy Mazdoor Union had not come into existence by that date. The workers may have been the members of the Antrarastriyavadi Mazdoor Union and raising voice for their cause through that union. Registration certificate Ex. W-23 also shows that Nanak Dairy Mazdoor Union was registered on 28th February, 1989. The name of the present workman exists in the complaint dated 1st May, 1985 and in the complaint dated 29th August, 1986. It showing that the present workman was actively participation in the trade union activities and was on the hit list of the management.

15. There is however, no dispute that Vivek Sharma was the manager of the factory at the relevant time. He was the man who has appointed the workman and had issued transfer orders. He had appeared in the court and made statement in examination in chief. He was also partly cross-examined. His further cross-examination was deferred as he had not brought the attendance register. He was, however, not produced for that purpose on the ground that he had left the service of the company and in his place the new manager Sh. R. C. Sharma was examined. Sh. R. C. Sharma made statement of the basis of record. His oral version cannot be taken into consideration that the workman had refused to take letter Ex. M-1 (transfer order) or that he was given letter Ex. M-2 before the Labour Inspector. It can however, be taken that these letters Ex. M-1 and Ex. M-3 were issued. The workman has not placed on record any letter through which his services were terminated. He has also not stated on oath that he was stopped on the factory gate on any date. There is absolutely no evidence from the date of the workman to show that his services were terminated. In this situation the only logical conclusion appears to be that the workman was transferred from Hoshiarpur to Delhi. It may be that the management transferred him to Delhi as an administrative measure on account of his aforesaid union activities. It is not his case and so it can not looked into being beyond the point of reference.

16. For the reasons recorded above, it is held that the service of the workman was not terminated by the management as alleged by the workman. The reference is beyond the point of real controversy between the parties and so it is bad in law. The workman is not entitled to any relief. Issues No. 1 & 3 are decided in favour of the management and against the workman.

Issue No. 2 :

17. The management has not led any evidence to prove that the workman has been gainfully employed. So Issue No. 2 is decided against the management and in favour of the workman.

18. Relief :

In view of my findings on Issues No. 1 & 3 above, it is held that the service of the workman was not terminated by the management as alleged by the workman. The workman is not entitled to any relief. The award is passed accordingly.

The 26th August, 1994.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2805 dated 31st August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./585.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad respect of the dispute between the workman and the management of M/s T. C. Haryana, Chandigarh *versus* Giri Raj.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Reference No. 194/90.

between

THE MANAGEMENT OF M/S TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD.

versus

THE WORKMAN NAMELY SH. GIRI RAJ, CONDUCTOR, S/O SH. KARAN SINGH C/O SH. BHIM SINGH YADAV, INTAK, CHAWALA COLONY, 100, BEET ROAD, BALLABGARH.

Present :

Sh. B. S. Yadav, AR, for the workman.

Sh. Suraj Parkash, for the respondent

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 16 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties maintained above, to this court for adjudication,—*vide* Haryana Govt. Endorsement No. 20376-79 dated 21st May, 1990 :—

Whether the termination of services of Sh. Giri Raj is legal & justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was appointed as conductor on 20th January, 1976 in Haryana Roadways depot at Gurgaon. He had unblemished record of service through out. On 1st April, 1981 he was transferred to Haryana Roadways, Faridabad. He was served with chargesheet dated 13th October, 1986 containing false allegations. He submitted reply indicating correct position but it did not satisfy the respondent No. 2 and he ordered for holding of domestic enquiry. The respondent No. 2 did not appoint his representative. The enquiry officer performed his role too. He recorded the statement of the only witness examined on behalf of the respondent No. 2 by twisting it in favour of the respondent No. 2. He was not afforded opportunity to cross examine the witness. He requested the enquiry officer time and again to summon Khacheis Singh, driver, but he was not summoned. The enquiry officer also did not note his request to this effect in the enquiry proceedings. He was also not supplied with the copy of the enquiry of proceedings. The enquiry officer gave his findings in favour of the respondent No. 2 under his pressure. The respondent No. 2 did not give him show cause notice and illegally terminated his services. He is thus, entitled to be reinstated into service with continuity in service and back wages.

3. The respondent No. 2 in his written statement dated 15th May, 1991 refuted the averment of the workman that he had unblemished record of service and stated that he was served with 15 warnings, was censured 14 times and his 29 annual increments were stopped. The allegation that the enquiry officer had not conducted the enquiry properly was denied. It was specifically denied that the enquiry officer had given his findings under his influence. It was also pleaded that the workman was served with show cause notices alongwith copy of enquiry report but he himself had not submitted any reply to the said show cause notice and then the impugned action was taken.

4. The workman reiterated his averments and denied the averments of the respondent No. 2 in his rejoinder dated 9th September, 1991.

5. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the domestic enquiry held by the management is fair and proper ?
- (2) Whether the termination of services of Sh. Giri Ruj is legal and justified ? If not, to what relief, is he entitled to ? (As per reference).

6. Both the sides have adduced evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issue No. 1 :

8. MW-2 D. R. Gupta, Accounts Officer, deposed that he had conducted the enquiry in the case. The enquiry proceedings were Ex. M-6 to Ex. M-9 bearing his signatures. He had recorded the statement of the witnesses in the presence of the workman and the workman had appended his signatures on each date of hearing. The workman had also cross-examined the witnesses examined by the department. The workman was also afforded full opportunity to give his defence. In the end, he stated that he submitted his enquiry report Ex. M-10.

9. On the basis of aforesaid statement, it has been submitted on behalf of the respondent No. 2 that it stands proved that the enquiry officer had conducted the enquiry according to the principles of natural justice and as such it is fair and proper enquiry.

10. On the other hand, the workman examined himself and one Khachera Singh. He himself deposed that he was not afforded any opportunity to cross examine the witness examined by the department. He had made statement before the enquiry officer on 13th October, 1983 that he wanted to examine Khachera Singh driver No. 60 in his defense, but the enquiry officer himself neither indicated this fact in the enquiry proceedings nor had summoned the witness. The enquiry officer had neither provided him copy of enquiry proceedings nor copy of the enquiry report. He further stated no representative of the department had appeared before the enquiry officer and the enquiry officer had recorded the statements of the witnesses of the respondent No. 2 of his own accord. WW-2 Khachera Singh deposed that on 21st September 1986 he and the present workman were detailed on a bus and they had done their duty upto 3.00 P.M. on that day as per their rotation. Then Bhup Singh duty clerk had told them that they should go to village Sihol as the bus which was scheduled to go to Sihol had not come. In that situation they parked their bus at the Bus Stand. They parked their bus at the Booth that about 6. p.m. for going to village Sihol. The passengers bound for village Sihol boarded the bus. Meanwhile the bus which was to go to village Sihol in routine reached there. The driver and conductor of that bus asked Sher Singh duty clerk that they will go to village Sihol as per their duty and that the other bus shall not go. They also stated to duty clerk that they will not get night allowance if they will not go. In that situation Sher Singh asked the passengers sitting in their bus to alight and board the other bus. There was a verbal wrangle between passengers and Sher Singh. In the end, he deposed that in fact that there had been no fight between the present workman and Sher Singh and the present workman had not torned the clothes of Sher Singh.

11. It has been vehemently contended on behalf of the workman that the perusal of the enquiry proceedings clearly shows that the respondent No. 2 had not deputed his authorised representative to appear before the enquiry officer. The enquiry officer himself had performed the role of representative of the respondent and recorded the statement of the witness of the respondent of his own sweet will. Thus, the enquiry stands vitiated on this ground. In reply it has been contended on behalf of the respondent No. 2 that MW-2 D. R. Gupta clearly stated in his cross examination that Satbir Singh clerk had appeared before him as representative of the respondent. Apart from this, the appointment of presenting officer was not obligatory and the enquiry Officer was competent to cross examine the witnesses. To support this plea a reference has been made to the case of Tarapada Dhook versus Union of India 1988(6) SLR 631 in which it was held that the non appointment of presenting officer and examination of witnesses and cross examination of the applicant by the enquiry officer did not vitiate the enquiry proceedings.

12. The perusal of the enquiry proceedings Ex. M-6 shows that the enquiry officer noted the presence of the persons appearing before him before recording their statements. He recorded the presence of Sher Singh witness of the respondent and secondly of Giri Raj, the present workman. He did not record the presence of Satbir Singh, clerk the alleged representative of the respondent. The enquiry officer also admitted in his cross examination the fact that the name of Satbir Singh did not figure in writing in the enquiry proceedings. In this situation, it has to be taken as a matter of fact that the respondent No. 2 was not represented through Satbir Singh clerk. It is also not disputed that the enquiry officer himself cross examined the witnesses. These two facts however, do not vitiate the enquiry proceedings as law laid down in the case referred to by the authorised representative of respondent No. 2.

13. It has next been urged on behalf of the workman that the basic report made by the complainant Sher Singh was not produced in the enquiry proceedings. So the workman was deprived of his right to cross examine Sher Singh witness of the respondent with regard to that complaint/report. That being so, the enquiry proceedings stands vitiated. To counter this plea, it has been submitted on behalf of the respondent No. 2 that Sher Singh complainant appeared before the enquiry officer. No question was asked by the workman from him about the said report. The non-production of report made by Sher Singh has thus, no adverse effect on the enquiry proceedings.

14. Sher Singh, complainant was to state the facts contained in his original report made by him to the respondent No. 2. The workman had never asked for a copy of the said report from the respondent No. 2. The respondent No. 2 examined Sher Singh before the enquiry officer and he confirmed the allegations. The domestic enquiry proceedings are of quasi-judicial nature. The strict rules contained in the Indian Evidence Act are not applicable to the enquiry proceedings. Keeping in view this position, it can not be taken that the non production of original report made by Sher Singh had caused prejudice to the workman to the extent that it may be held that the enquiry proceedings are vitiated. That being so, the objection taken on behalf of the workman is found to be untenable.

15. It has been further urged on behalf of the workman that the enquiry officer admitted in his cross examination that he had not furnished copy of the enquiry proceedings to him. He was deprived of his right to prepare his defence properly and as such the non-supply of copy of enquiry proceedings vitiates the enquiry proceedings. To meet this objection it has been pointed out from the side of the respondent No. 2 that the enquiry officer clearly stated in his cross examination that the workman had not asked for a copy of the enquiry proceedings and as such the objection taken by the workman is not tenable.

16. The perusal of the enquiry proceedings clearly show that the enquiry officer had recorded the statement of only one witness Sher Singh complainant from the side of the respondent No. 2. The signatures of the workman are available at the end of this statement. Keeping in view, this position it can not be taken that the non-supply of copy of enquiry proceedings had caused any prejudice to the workman and so the plea taken by the respondent No. 2 has to prevail.

17. It has been lastly contended on behalf of the workman that the respondent No. 2 examined only one witness Sher Singh. He examined two witnesses in his defence and they supported his version. He had requested the enquiry officer to summon Khachera Singh driver who was on duty with the workman on the same bus at the relevant time. The enquiry officer did not record the request in enquiry proceedings. The enquiry officer also did not allow him to examine Khachera Singh. He has examined Khachera Singh in the court and he made statement referred to above. It is clear from the evidence led before the enquiry officer and from the statement of Khachera Singh examined in the court that the charges against the workman were not proved. The enquiry officer held the workman guilty of the charges on the basis of uncorroborated statement of Sher Singh complainant. It is thus, clear that the enquiry officer did not give his fair report. To support this plea a reference has been made to the case between Anil Kumar versus Presiding Officer and others 1986 LLJ (1) 101 in which it was held that the enquiry officer has to pass a speaking order in the sense that the conclusions are supported by reasons.

18. To counter the aforesaid position, it has been submitted on behalf of the respondent No. 2 that the plea taken by the workman that he had made request to the enquiry officer to allow him to examine Khachera Singh is an after thought. He had never made such request. It has been further submitted that the perusal of the record of enquiry placed on file clearly shows that the charges against the workman were proved from his own admission, statement of the witness examined by the workman himself as well as from the statement of the complainant. The enquiry officer discussed the evidence led before him by both the parties and passed the speaking order.

19. Briefly the charges against the workman were that he had unauthorisedly driven the bus and had abused and torn the clothes of Sher Singh duty clerk.

20. The perusal of the enquiry proceedings indicates that the enquiry officer had summoned Balli, Assistant Electrician, and Bhup Singh, duty clerk as defence witnesses. It cannot be taken that the workman had asked for the summoning of Khachera Singh, driver. The plea taken by the workman in this regard thus,

appears to be an afterthought. Bhup Singh, duty clerk, clearly stated before the enquiry officer that the present workman, who was appointed as conductor and not as driver, had parked the bus at booth for going to village Sihol. Bhup Singh also admitted that he had found the present workman and Sher Singh fighting and he had separated them. He also stated that the quarrel had taken place when Sher Singh, duty clerk had stopped the present workman from going to village Sihol. Keeping in view this position, the findings of the enquiry officer cannot be taken to be perverse. The plea taken by the workman is thus, not found to be tenable.

21. For the reasons recorded above, it is held that the enquiry got conducted by the respondent No. 2 was fair and proper. Issue No. 1 is decided in favour of the respondent and against the workman.

Issue No. 2:

22. MW-1 Satbir Singh deposed that after the receipt of the enquiry report, the workman was served with show cause notice Ex. M-11. The workman was further afforded an opportunity of personal hearing through letter Ex. M-12. The workman was heard in person and then the impugned order terminating the services of the workman Ex. M-13 was passed. On the basis of this evidence, it has been submitted on behalf of the respondent No. 2 that the impugned order terminating the services of the workman is legal and valid and he is not entitled to any relief.

23. On the other hand, the workman deposed that he was not supplied with the copy of the enquiry report. He had sought permission to examine Khachera Singh driver in his personal hearing but his request was declined. On the basis of this statement, it has been submitted on behalf of the workman that the rules of natural justice were not followed by the respondent No. 2 before the terminating the services of the workman and as such the impugned order is illegal and unjustified. To support this plea a reference has been also made to the case between Union of India and others and E. Bashyan 1988 LLJ (2) 249 in which the matter regarding the failure to supply a copy of the report of the enquiry officer to the delinquent was referred a larger bench.

24. It has been found above that the plea taken by the workman with regard to the no-summoning of Khachera Singh driver by the enquiry officer is an afterthought. It is clear from the perusal of show cause notice Ex. M-11 that the copy of the enquiry report was given to the workman alongwith show cause notice. It was not the duty of the enquiry officer to supply a copy of the enquiry report to the workman. Keeping in view this position, it can not be taken that the rules of natural justice were not followed before the passing the impugned order.

25. In view of the position discussed above, it is held that the termination of service of the workman is legal and justified. Consequently, the workman is not entitled to any relief. The award is passed accordingly.

The 9th September, 1994.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2882, dated the 15th August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to Govt., Haryana, Labour Deptt., Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./586.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s T. C. Haryana, Chandigarh versus Som Parkash:—

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD.

Ref. No. 199/91.

between

THE MANAGEMENT OF TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.

2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD.

versus

THE WORKMAN NAMELY SH. SOM PARKASH, S/O SHRI MURARI LAL C/O SHRI BHIM SINGH YADAV, INTAK OFFICE, 65-A, CHAWALA COLONY, BALLABGARH.

Present :

Sh. Bhim Singh Yadav AR for the workman.
Sh. Suraj Parkash for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government, Endst. No. 28009-dated 28th July, 1991 :—

"Whether the termination of services of Shri Som Parkash is legal & Justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was appointed as conductor in the year 1977 in Haryana Roadways depot at Hisar. He had unblaimished record throughout his service. He was served with a charge-sheet through letter 16th March, 1985 containing false, baseless and connected allegations. He submitted reply depicting true facts but an order for holding of domestic enquiry was passed appointing Accounts Officer, Bhiwani as Enquiry Officer. The enquiry Officer did not conduct the enquiry. The workman was transferred to Haryana Roadways, Faridabad depot. The respondent No. 2 then appointed Accounts Officer, Faridabad as enquiry officer. He appeared before him. None appeared before the enquiry officer from the side of the respondents. He produced advance booking voucher before the enquiry officer to prove that he had worked during the period he was shown to be absent from duty. The enquiry officer did not supply him a copy of the proceedings of the enquiry and submitted enquiry report before the respondent No. 2. The respondent No. 2 issued a show cause notice and then passed the impugned order terminating his services. The impugned action of the respondent No. 2 is illegal and unjustified. He is entitled to be reinstated into service with continuity in service and full back wages.

3. The respondent No. 2 submitted written statement, dated 9th November, 1992 stating therein that the workman had been issued charge-sheet for having remained absent from duty for the period from 20th December, 1984 to 23rd December, 1985, 4th January, 1985 to 6th January, 1985, 9th January, 1985 to 17th January, 1985 and 20th January, 1985 to 31st January, 1985. w.e.f. 11th February, 1985 onwards. The workman did not submit any reply to the charge-sheet and so the accounts officer Haryana Roadways, Bhiwani was appointed as enquiry officer. Then the workman was transferred to Haryana Roadways, Faridabad and the enquiry file was also sent to the G. M. Haryana Roadways, Faridabad. In those circumstances, the Accounts Officer, Haryana Roadways, Faridabad, was appointed as Enquiry Officer. The enquiry Officer recorded the statement of witnesses examined on behalf of the respondents No. 2 in the presence of the workman. The workman was given full opportunity to cross examine those, witnesses as well as to lead evidence in defence. The enquiry officer submitted his report holding the workman guilty of the charges. Then show cause notice was issued to the workman through registered letter. The workman failed to furnish any reply. The workman was also afforded an opportunity of personal hearing and the letter to this effect was given to him on 2nd December, 1989. The workman did not avail of that opportunity. Consequently, the impugned order terminating the services of the workman was passed.

4. The workman did not submit the rejoinder.

5. On the pleadings of the parties, the following issues were framed :—

1. Whether the fair and proper enquiry was conducted in the matter ? If so, to what effect?
2. Whether the termination of service of Sh. Som Parkash is legal & justified ? If not, to what relief, is he entitled to ? (As per terms of reference.)

3. Relief.

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the file carefully. My findings on theforesaid issues are as under :—

Issue No. 1 :

8. The respondent No. 2 has examined D.R. Gupta, Accounts Officer who had conducted the enquiry. He deposed that he was appointed as enquiry officer through letter Ex. M-5. He had conducted the enquiry proceedings and the copy of the same Ex. M-10. He had submitted enquiry report Ex. M-8. He further stated that he had given full opportunity to the workman to cross examine the witnesses examined by the respondents but he had not asked any question. On the other hand, the workman deposed that the witness examined by the respondents had not produced any record before the enquiry officer. He further stated that he had been on duty during the period he was shown to have been absent from duty. He had also furnished proof in respect of the same before the enquiry officer.

9. On the basis of aforesaid evidence, it has been submitted on behalf of the respondents that it stands proved that a fair and proper enquiry was conducted. On the other hand, Sh. B.S. Yadav authorised representative of the workman contended that MW-2 D.R. Gupta enquiry officer admitted in his cross examination that the witness examined by the respondent had not produced the attendance register on the basis of which the report regarding absence from duty was made by him. The enquiry officer, thus, wrongly concluded simply on basis of the statement of one witness examined by the respondents that the workman was guilty of the charge of absence from duty. He further stated that the finding given by the enquiry officer is wrong as the workman had furnished proof before him to the effect that he had attended his duty on 15th February, 1985. Thus, the enquiry can not be taken to be fair and proper.

10. The disciplinary proceedings were initiated against the workman on the report dated 14th February, 1985 made by Rajinder Singh, Chief Inspector, Dedari that the workman had been absent from duty for the period mentioned above. Sh. Rajinder Singh appeared before the enquiry officer on 17th October, 1988 and had confirmed that he had made the report dated 14th February, 1988 and it bore his signatures. appears from the proceedings recorded by the enquiry officer Ex. M-10 that the contents of this report dated 14th February, 1988 were read out to the workman and he was asked to cross examine Rajinder Singh Singh but made statement in writing that he did not want to ask any question. In that situation, the enquiry officer himself had asked a question from Rajinder Singh as to whether he had made reference in the original report about the absence of the workman prior to 14th February, 1985 or he had made report earlier. In reply, to this question the witness had stated that he was not sure as to whether he had made any report prior to 14th February, 1988 but it was definite that he had made the report dated 14th February, 1985 as per attendance register for the period under report. Keeping in view this position, it can not be said that the enquiry officer wrongly based his findings on the statement of Rajinder Singh witness examined by the respondent. It may be added that the workman had simply submitted before the enquiry officer an unattested photostat copy of attendance register showing that he was present on duty on 11th February, 1985. This document was rightly ignored by the enquiry officer being an unattested copy. It is also clear from the proceedings of the enquiry Ex. M-10 referred to above that full opportunity was given to the workman to defend his case. That being so, it is held that the enquiry conducted by MW-2 D. R. Gupta was fair and proper. Issue No. 1 is decided against the workman and in favour of the respondents.

Issue No. 2

11. MW-1 Kawar Sen deposed that Rajinder Singh, Chief Inspector had made report Ex. M-1 about the absence of the workman. A telegram Ex. M-2 was sent to the workman to resume duty but he had not done so. Consequently, chargesheet Ex. M-3 was issued to the workman. The workman had not submitted any reply and so firstly accounts officer, Bhiwani was appointed as enquiry officer and then accounts officer, Faridabad depot was appointed as enquiry officer after the transfer of the workman. A copy of the show cause notice issued to the workman was Ex. M-6. The workman was given an opportunity of personal hearing through letter Ex. M-7 and finally the services of the workman were terminated through letter Ex. M-9. On the other hand, the workman deposed that he had not received the report of enquiry officer. He had also not received any show cause notice. He was also not given an opportunity of personal hearing. He had been on duty during the period he was shown to have been absent from duty.

12. It has been contended on behalf of the respondents that the workman himself admitted in his cross examination that he had received a copy of the show cause notice after long delay. It is clear from the statement of MW-1 Kawar Sen that letter dated 30th November, 1988 regarding personal hearing on 12th December, 1988 was duly received by the workman on 2nd December, 1988. The workman could ask for a copy of the enquiry report at that time if he had not received it earlier. The workman did not submit any reply to the chargesheet or to the show cause notice. The workman also did not avail the opportunity of personal hearing. It is thus, established that services of the workman were legally and validly terminated and he is not entitled to any relief.

13. In reply, it has been submitted on behalf of the workman that it was incumbent upon respondent No. 2 to furnish a copy of enquiry report to the workman along with show cause notice. The perusal of show cause notice, dated 16th November, 1988 Ex. M-6 itself shows that a copy of the enquiry report was not furnished to the workman. The impugned action terminating the services of the workman is thus, illegal. Apart from this as per allegations against the workman he had been absent from duty only for about 1½ months. The workman had rendered unblemished service for a period of 8 years. The penalty of termination of services imposed on the workman is quite harsh and unjustified. The court may thus, order for his reinstatement by invoking the powers under Section 11-A of the Act.

14. It is not disputed in this case that the workman was not supplied with a copy of the enquiry report alongwith the chargesheet. There is however, nothing from the side of the workman to show that the workman had ever asked for the copy of the same. The workman had an opportunity to ask for the same in his personal hearing but he did not avail of that opportunity. It was held by our own Hon'ble High Court in the case of Ram Vinod Jha Versus Labour Court, Faridabad and another 990(1) LLN 601 that non supply of copy of enquiry report is not fatal, if the same is not asked for by the workman. The Hon'ble Supreme Court of India held in the case of Union of India Versus Mohammad Ramzan Khan 1991(1) LLN 380 that a delinquent Government servant is entitled to supply of copy of enquiry report along with the recommendation if any, if the matter of proposed punishment w.e.f. 20th November, 1990 that is the date on which this decision was taken by the Hon'ble Supreme Court of India. Keeping in view

this legal position the impugned order passed by respondent No. 2 terminating the services of the workman can not be held to be illegal on the ground of non-supply of copy of enquiry report.

15. The matter regarding Quantum of punishment has been considered under Section 11-A of the Act. The penalty of termination of service has been imposed on the workman on that ground that he had been absent from duty without any intimation for about 1½ months. The plea taken by the workman that he had not been absent during this period has not been found to be correct. The workman did not submit any reply to the chargesheet or to the show cause notice. The workmen also did not avail of opportunity of personal hearing in which he could make a request for the imposition of lesser penalty. Keeping in view all the facts and circumstances, it does not appear to be a fit case to pass an order for the reinstatement of the workman by invoking the provision of section 13-A of the Act.

16. For the reasons recorded above, it is held that termination of service of the workman by the respondent No. 2 is legal and valid. He is not entitled to any relief. Issue No. 2 is decided in favour of the respondents and against the workman.

17. In view of my findings on Issue No. 1 & 2 it is held that the termination of services of the workman by the respondent No. 2 is legal and valid. Consequently, the workman is not entitled to any relief. The award is passed accordingly.

The 5th September, 1994.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad

Endorsement No. 2865 dated 15th September, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Govt. of Haryana, Labour Deptt., Chandigarh.

U. B. KHANDUJA,
Presiding Officer,
Labour Court-II,
Faridabad

No. 14/13/87-6 Lab./587.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s T. C. Haryana, Chandigarh *versus* Sher Singh.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 211/93

THE MANAGEMENT OF M/S T. C. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.
2. GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD.

versus

THE WORKMAN NAMELY SH. SHER SINGH, S/O SH. RAGHUBIR SINGH, C/O SH. BHIM SINGH YADAV, 65-A, CHAWALA COLONY, 100 FEET ROAD, BALLABGARH (FARIDABAD)

Present :

Sh. B. S. Yadav, AR, for the workman.

Sh. R. P. Dagar, ADA, for the respondent.

AMARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above to this court for adjudication,—*vide* Haryana Govt. Endorsement No. 3849—55, dated 29th January, 1990 :—

"Whether the termination of services of Sh. Sher Singh is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed as helper by the respondent No. 2 in the year 1981. His record of service has been unblemished. The respondent No. 2 used to get work of carpenter from him but he was paid wages for the post of helper. He requested the respondent No. 2 to make the payment

of wages to him as carpenter. The respondent No. 2 did not relish his request and terminated his services w.e.f. 1st May, 1985 without issuing chargesheet, without holding any enquiry and providing any opportunity of hearing. He made appeal to the respondent No. 1 but to no effect. He is thus, entitled to be reinstated into service with continuity in service and with full back wages.

3. The respondent No. 2 appeared and submitted written statement dated 25th July, 1990 admitting the fact that the workman was appointed in the year 1981 as helper. The allegation of the workman that he was assigned the job of carpenter was denied. It was further stated that the order dated 4th June, 1984 was passed after voluntarily retirement of the workman w.e.f. 4th May, 1984. The question of issuing any chargesheet or show-cause notice did not arise. The workman served the demand notice after expiry of about three years and as such the reference is bad.

4. The workman submitted rejoinder dated 6th November, 1990 re-asserting the previous averments and denying the averments of the respondent No. 2.

5. On the pleadings of the parties, the following issue was framed :—

(i) Whether the termination of services of Sh. Sher Singh is legal and justified ? If not, to what relief, is he entitled to ? (As per reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issue are as under :—

Issue No. 1 :

8. MW-1 S. Babi Lal, clerk of respondent No. 2 deposed that the workman was initially appointed as helper on 1st November, 1981 for a period of one month and his period of service was extended thereafter from time to time. He had started remaining absent from duty w.e.f. 4th May, 1984 as per report Ex. M-1 and so his services were terminated through order dated 4th June, 1984 Ex. M-1. In the end, he stated that the workman had not preferred any appeal against the said order.

9. On the other hand, the workman deposed facts mentioned above that he had been in the service of the respondent No. 2 w.e.f. 1st November, 1981 to 30th April, 1985 and his services were terminated on 1st May, 1985. He also placed on record Ex. W-1 copy of appeal Ex. W-2 postal receipt and reminder Ex. W-3 sent to the appellate authority.

10. On the basis of aforesaid evidences, it has been submitted on behalf of the respondent No. 2 that the workman was appointed on daily wages basis. He was not a regular or permanent employee of the department. He had been absent from duty w.e.f. 4th May, 1984 without any intimation. His services were thus, legally and validly terminated through order dated 1st June, 1985 Ex. M-1.

11. On the other hand, it has been submitted on behalf of the workman that it is clear that the workman had rendered service for a continuous period of more than 240 days prior to the date of termination of his services. It was incumbent upon the respondent No. 2 to comply with the provision of Section 25-F of the Act before passing the impugned order. Obviously, it was not done. The workman is thus, entitled to be reinstated into service with continuity in service and full back wages.

12. There is no dispute that the workman had been in the service of respondent No. 2 for a period of more than 240 days continuously prior to the date of termination of his services. It was incumbent upon respondent No. 2 to afford an opportunity to the workman to show cause as to why he had been absent from duty w.e.f. 4th May, 1984. The action of the respondent No. 2 is violative of principles of natural justice as held by the Hon'ble Supreme Court of India in the case of D. K. Yadav versus JMA Industries 1993 (II) LLJ 696. Apart from this, the impugned action of the respondent is violative of provision of Section 25-F of the Act as the workman was not paid one month wages and retrenchment compensation before termination of his services. Consequently, it is held that the termination of services of the workman by the respondent No. 2 is illegal and unjustified. The workman is entitled to be reinstated into service with continuity in service. The workman is however, not entitled to full back wages as he himself served the demand notice after the expiry of about three years from the date of termination of his services. He is entitled to only 50% of the back wages w.e.f. 24th August, 1989. Issue No. 1 is thus, decided in favour of the workman and against the respondent No. 2.

13. For the reasons recorded above, it is held that the termination of services of the workman by the respondent is illegal and unjustified. He is entitled to be reinstated into service with continuity in services and 50% of the back wages w.e.f. 24th August, 1989. The award is passed accordingly.

The 2nd September, 1994.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2847, dated 9th September, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Govt., Haryana, Labour Deptt., Chandigarh.

U. B. KHANDUJA,
Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6 Lab./588.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad respect of the dispute between the workman and the management of M/s. Beco Engineering Company Ltd., Ballabgarh *versus* Rajinder Singh.

**IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD**

Reference No. 522/88
between

**THE MANAGEMENT OF M/S. BECO ENGINEERING COMPANY LIMITED, 23/7, DELHI MATHUA
ROAD, BALLABGARH**

versus

**THE WORKMAN NAMELY SHRI RAJINDER SINGH, SON OF SHRI HANSRAJ, C/O SHRI BHIM
SINGH YADAV, INTAK OFFICE, 65-A, CHAWALA COLONY, 100 FEET ROAD,
BALLABGARH**

Present:

Shri B. S. Yadav, A.R., for the workman.

Shri M. Dias, A.R., for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government, Endst. No. 41768—73, dated 14th September, 1988:—

Whether the termination of services of Shri Rajinder Singh is legal and justified ? If not, to what relief, is he entitled to as result thereof ?

2. The case of the workman is that he was appointed as a Tractor Driver on 15th July, 1987 by the management. The management used to pay him wages as that of daily wages helper. He requested for payment of wages as Tractor Driver. The management felt irritated and terminated his services on 3rd June, 1988 illegally without issuing charge sheet and payment of retrenchment compensation etc. He is thus, entitled to be reinstated into service with continuity in service and full back wages.

3. The management submitted written statement, dated 12th December, 1988 stating therein that the workman was engaged on casual basis to perform various odd jobs. He was paid minimum wages fixed by the Government. On the expiry of his casual period of employment he was informed that his services were no longer required. He had not worked during the period from 1st December, 1987 to 28th February, 1988. He had rendered service for only 199 days. He was not entitled to retrenchment compensation. The action of the management is thus, legal and valid.

4. The workman submitted rejoinder, dated 23rd February, 1989 reasserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issue was framed:—

(1) Whether the termination of services of Shri Rajinder Singh is legal and justified ? If not, to what relief, is he entitled to as result thereof ? (As per reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the file carefully.

8. Two witnesses have been examined by the management. MW 1 B. M. Jolly, Works Manager deposed that the workman had worked as casual worker with effect from 15th July, 1987 to November, 1987 and joined again in the month of March, 1988. He also placed on record copies of attendance register Ex. MW 1/1 and copies of payment register Ex. MW 1/2. He also placed on record a copy of letter, dated 16th August, 1988, Ex. MW 1/2 sent to the Labour Commissioner. In the end, he deposed that the workman had worked only for a period of 199 days. MW 2 Naresh Kataria, hand writing and finger prints expert deposed that he had examined and compared the disputed signatures of the workman available on the bills, Ex. MW 1/2 for the period from July, 1987 to November, 1987 and March, 1988 with his specimen signatures taken in the court and his admitted signatures available on the authority letter and claim statement and had come to the conclusion on basis of reasons recorded in his report, Ex. MW 2/21 that the disputed signatures were written and signed by the writer of the specimen signatures.

9. Two witnesses have been examined by the workman. WW 1 Rajinder Singh, workman deposed that he had continuously worked as Tractor Driver during the period from 15th July, 1987 to 3rd May, 1988. He was not given any appointment letter at the time of his appointment. He was also not given attendance card, E.S.I. card and wages slip. He further stated that he was assigned the job of transporting drinking water from village Jharseili 5-6 times daily and entry to this effect used to be at the gate of the factory made every time. In cross examination, he denied his signatures on the receipt in respect of payment of wages produced by the management. WW 2 Des Raj confirmed the version of the workman that he was entrusted with the job of bringing water from the village.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the management that it stands proved from the copies of attendance register and payment of wages register that the workman had worked only for a period of 199½ days. He had not completed service for a period of 240 days prior to the date of termination of his services. He is thus, not entitled to any relief.

11. In reply it has been submitted on behalf of the workman that the management deliberately did not produce the record for the period from December, 1987 to February, 1988. The workman had been doing work during this period as stated by him on oath. The workman could not produce any appointment letter as the same was not issued by the management and this fact was duly admitted by MW 1 B.M. Jolly. It is thus, clear that the workman had rendered service for a period of more than 240 days.

12. The management has led evidence in the form of copies of attendance register and payment of wages register to prove their contention that the workman had worked for a period of 199 days, with effect from 15th July, 1987 to 2nd May, 1988 except during the period from 1st December, 1987 to 28th February, 1988. The management did not produce the record for the period from 1st December, 1987 to 28th February, 1988 on the plea that the workman had not worked during this period. MW 1 B.M. Jolly clarified in his cross examination that they had not engaged the workman during this period as there was no work for being allotted to him. The workman himself did not summon the record for this period from the management to enable him to confront the witness of the management in cross examination. The workman also did not summon the record while leading evidence himself. The workman rather disowned his signatures on various receipts taken by the management at time of payment of wages. The management, thus, proved the factum of payment of wages by examining MW 2 Naresh Kataria, hand writing and finger prints expert.

13. The plea taken by the workman is that he was assigned the job of bringing drinking water from the village as the water available in the factory was brackish. It can be taken as the matter of common experience and knowledge that the requirement of drinking water is quite meagre during the pack winter months of December, 1987 to February, 1988. This position supports the version of the management that the workman was not kept in the job during the period from December, 1987 to February, 1988 as there was no work to be taken from him. It is thus, concluded that it stands proved the workman had not

rendered service for continuous period of 20 days before the termination of his services. He was thus, not entitled to retrenchment compensation. Consequently, the impugned action of the management terminating the services of the workman is legal and valid. The workman is not entitled to any relief. The award is passed accordingly.

U. B. KHANDUJA,

The 7th September, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endst. No. 2867, dated 16th September, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6 Lab./592.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s. Rubber Udyog, Vikash Pvt. Ltd., Ballabgarh *versus* Rubber Udyog Employees Union.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-II,
FARIDABAD

Reference No. 406/88

Between

THE MANAGEMENT OF M/S. RUBBER UDYOG, VIKASH PVT. LTD., PLOT NO. 60, SECTOR 25,
BALLABGARH (FARIDABAD)

versus

THE UNION NAMELY RUBBER UDYOG EMPLOYEES UNION, C/O SHRI SUBHASH CHANDER,
HOUSE NO.76, SHAYAM COLONY, BALLABGARH (FARIDABAD)

Present:

None for the Union.

Shri K. P. Aggarwal, A.R. for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above to this court for adjudication, —*vide* Haryana Government, Endst. No. 48560—65, dated 4th December, 1987:—

1. Whether each worker of the factory is entitled to get two pairs of uniform, if so, to what details ?
2. Whether each worker of the factory is entitled to get two pairs of leather shoes, if so, to what details ?
3. Whether each worker of the factory is entitled to get Rs. 20 per month as washing allowance, if so, to what amount ?

2. Briefly stated the facts of the case are that the workers union known as Rubber Udyog Employees Union, Faridabad, gave demand notice dated 12th February, 1987 to the Management demanding for each workman two pairs of uniform, two pairs of shoes, conveyance allowance, house rent allowance, washing allowance, night shift duty allowance etc. the dispute could not be settled and resultantly the matter was referred to the Government of Haryana. The Government of Haryana then made the present reference to the aforesaid effect.

3. The management submitted written statement dated 21st March, 1988 stating therein that there was no statutory requirement to wear uniform and as such the workers are not entitled to claim the same. The management, had rightly denied the facility of providing of two pairs shoes as there was no necessity to provide the same. With regard to washing allowance, it was submitted that the management was providing soap to the workman for washing of hands and taking bath after working hours in the factory. An additional plea was also taken that the financial condition of the factory is not sound and as such it will not be proper to burden the management with financial liability. Two preliminary objections were also taken that the dispute is not properly espoused and that the tribunal has no jurisdiction to adjudicate the matter in dispute.

4. The union submitted rejoinder, dated 26th May, 1988, re-asserting the previous averments and denying the averments of the Management.

5. On the pleadings of the parties, the following issues were framed:—

- (1) Whether this tribunal has no jurisdiction to entertain the said dispute as alleged ?
- (2) Whether the dispute has not been properly espoused as alleged ?
- (3) As per reference.

6. Two witnesses have been examined by the union. The union could not examine the remaining evidence despite the fact that several opportunities were granted for the purpose. Consequently, the evidence of the union was closed by the order, dated 17th August, 1992 of the Court.

7. The management examined one witness on 3rd February, 1993. The examination in chief of an other witness of the management was recorded on 25th March, 1994, but his cross examination was deferred and the case was fixed up for cross examination of that witness on 8th June, 1994 and then for 5th August, 1994. On 5th August, 1994 none appeared for the union and as such it was ordered that the union be proceeded against *ex parte*. The management closed *ex parte* evidence on that date.

8. I have heard the authorised representative of the management and also gone through the file carefully. My findings on the aforesaid issues are as under:—

Issue No. 1:

9. The authorised representative of the management did not press for this issue during the course of arguments and as such the issue is decided against the management and in favour of the union.

Issue No. 2.

10. It has been submitted on behalf of the management that no resolution has been placed on file through which the workman had authorised the union to submit the present demand notice. The mere fact of registration of the union as trade union does not authorise the union to serve to general demand notice to the management. In other words, espousal by the workman is a must. To support this position a reference has been made to the case reported as 1975 (1) LLJ 293 in which it was held that where a dispute is sponsored or espoused by a union of workman authority to do must be proved. It was also held in this case that the material evidence either a resolution or authorisation by workmen or substantial number of workman was necessary for a union to represent the workmen.

11. The perusal of claim statement placed on file shows that it was signed by the substantial number of workmen. Similarly authority letter in form 'F' is also signed by a large number of workmen. Keeping in view this position, the reference can not be rejected on the ground that the dispute has not been properly espoused and the law laid down in the case referred to above does not apply. Issue No.2 is decided against the management and in favour of the union.

Issue No. 3:

12. Two witnesses have been examined on behalf of the union. WW-1 Bhagwati Parsad deposed that they have made demands for supply of two pairs of uniforms as their clothes get spoiled by a sticking of small pieces of rubber and sprinkling of oil. Apart from this the possibility of occurring of an accident by wearing loose dress could not be ruled out. The management was giving only one uniform. The second uniform was necessary to keep it clean. They have also asked for washing allowance at the rate of Rs. 20 per month as they have to incur considerable expenditure to get their uniform washed. He further stated that the workmen have to handle hot rubber sheets. Iron powder is always found on the floor in the workshop. The boilers used in the company are also very hot. Moreover the chemical got stick with the feet of the workmen. Thus, they have made demand for two pairs of leather shoes for each workman. WW-2 Sati Ram deposed that the management had not shown any interest in meeting the demands mentioned in the demand notice and so the Government has made the reference.

13. On the other hand, the management has examined two witnesses. MW-1 R. L. Jain deposed that the factory had been finally closed with the permission of the Government and the representation made by the workmen against the closure had been dismissed by the Government as well as by the Hon'ble High Court. He placed documents Ex. M-1 to Ex. M-15 with regard to the closure of the factory. He also placed on record a chart Ex. M-16 containing the set off and set on the factory during the period from 1982 to 1987. He next stated that the company has been supplying soap cakes to the workmen as well as the amount for purchase of clothes for uniform as per agreement Ex. M-24. In the end, he deposed that the company had been engaged in the job of making rubber components for other big companies such as Hiro Honda, Maruti and Escorts. The company was not engaged in the job of manufacture of components. MW-2 R. K. Jain deposed that no such job was done in factory which required wearing of shoes by the workmen.

14. On the basis of aforesaid evidence, it has been submitted on behalf of the management that the demands of the workmen are not justified specially when the factory has finally been closed.

15. The perusal of profit and loss statements and set off and set the statements placed on record by the management for the period from 1982 to 1987 clearly show that the factory had been running into loss due to slow down and other similar methods adopted by the workmen. It is the reason that the Government approved the action of the management to close down the factory. There is no dispute that the factory stands finally closed. It is not disputed that one pair uniform was being supplied to each and every workmen. It is also not disputed that soap cakes were being provided to the workmen as per settlement. There is no positive evidence from the side of the union to show that the company had been engaged in the job for which wearing of shoes was a must. Keeping in view all the facts and circumstances together the demand made by the union referred to above does not appear to be justified. Issue No. 3 is decided against the union and in favour of the management.

16. For the reasons recorded above, it is held that the demands made by the union as referred to above were not justified. The workmen are thus, not entitled to any relief. The award is passed accordingly.

U. B. KHANDUJA.

The 31st August, 1994.

Presiding Officer,
Industrial Tribunal-II,
Faridabad.

Endorsement No. 2855 dated 13th September, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,
Presiding Officer,
Industrial Tribunal-II,
Faridabad.